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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,209	01/12/2006	Vincent Hernette	052731	8497
29980	7590	05/07/2008		
NICOLAS E. SECKEL Patent Attorney 1250 Connecticut Avenue, NW Suite 700 WASHINGTON, DC 20036			EXAMINER NGUYEN, XUAN LAN T	
			ART UNIT 3683	PAPER NUMBER
			MAIL DATE 05/07/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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TECHNOLOGY CENTER 3600

NICOLAS E. SECKEL  
Patent Attorney  
1250 Connecticut Avenue, NW Suite 700  
WASHINGTON, DC 20036

In re Application of	:	
Vincent Hernette et al.	:	
Appl. No. 10/544,209	:	<b>DECISION ON PETITION</b>
Filed: January 12, 2006	:	<b>TO WITHDRAW FINALITY</b>
For: <b>SYSTEM FOR CONTROLLING THE STATE</b>	:	<b>UNDER 37 CFR 1.181</b>
<b>AND OPERATION OF A MOTOR VEHICLE</b>	:	

This is a decision on Applicants' Petition under 37 CFR 1.181 filed on March 14, 2008 to withdraw the finality of the Office action mailed November 1, 2007.

The Petition is **DISMISSED**.

Applicants allege that the final rejection mailed November 1, 2007 is premature because the new grounds of rejection presented by the examiner were not necessitated by amendment to the claims. Applicants state that amendments to the claims did not change the scope of the claimed invention and therefore could not have necessitated a new grounds of rejection.

MPEP 706.07(a) sets forth that the second or any subsequent action on the merits shall be made final except where the examiner introduces a new ground of rejection that is neither necessitated by applicants' amendment nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

A review of the record reveals that the examiner issued a new ground of rejection since the rejection was changed from a rejection based on 35 USC 102 in the Office action mailed on June 1, 2007 to a rejection based on 35 USC 103 in the final Office action mailed on November 1, 2007. In the final Office action issued on November 1, 2007, the examiner clearly indicated that the new grounds of rejection was necessitated by amendment of the claims. Upon review of the applicants' amendment filed on August 14, 2007, significant amendments were made to independent claim 1 from which all claims depend.

Applicants have argued that the claim construction presenting the group of functions at the end of amended independent claim 1 is the same in scope as was presented at the time of filing. However, the change in construction allows for different

combinations of functions not previously covered. Additionally, the claim construction argued by the applicants is not the only basis in which the change of scope necessitated a new grounds of rejection. Specifically, amendments were made which changed the required number of sensor elements as part of the invention for which protection is being sought by the applicants. Lastly, amendments to claim 1 were made in response to a rejection under 35 USC 112 due to indefinite nature of the originally filed claim language. A review of the record as a whole clearly indicates a change in scope of the independent claim.

**SUMMARY:** The Petition is **DISMISSED**.

The application will be forwarded to the examiner of record to treat the after final amendment filed concurrently with the petition of March 14, 2008.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Robert Siconolfi at 571-272-7124.

A handwritten signature in cursive script, reading "Kathy Matecki", is written over a horizontal line.

Kathy Matecki, Director  
Patent Technology Center 3600  
(571) 272-5250

KM/rs: 4/10/08

A small, handwritten mark in cursive script, resembling a stylized letter 'R' or the number '2'.